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ABSTRACT

The American conception of academic freedom, which is derived from 18th century Germany, is traced, and the issue of the right of academic freedom for religion professors at church-related colleges is explored. A committee of 15 American professors in 1915 proposed a "Declaration of Principles" that endorsed academic freedom but reflected the view of the German professor Friedrich Paulsen who argued that: religion is a subjective experience that only a believer can understand and teach well; and, in order to perpetuate themselves, religiously supported institutions have a right to require that religion professors conform with official dogma. It is claimed that the first argument fails because of confusion between the subject (or observer) and the subject matter (or religious experience). Subjects can formulate objective, or valid, conclusions about beliefs that are foreign to their own immediate experience. The argument from the right of self-perpetuation stands unless the institution attempts to control teaching and research in a selective manner. It is recommended that the American Association of University Professors retract their 1940 Statement on Academic Freedom clause that permits institutions to use their religious aims to limit academic freedom. (SW)

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SHOULD THE CHURCH RELATED COLLEGE RELIGION PROFESSOR ENJOY THE RIGHT OF ACADEMIC FREEDOM?

Historians agree that the American conception of academic freedom has its roots in eighteenth century Germany. In an age of enlightenment, the Germans came to believe that knowledge expands only when the individual researchers are free to discover it and to transmit their discovery in the classroom and the journal.(1)

The German doctrine of academic freedom applied both to students and teachers. The students were to enjoy Lernfreiheit and the teachers Lehrfreiheit. The American university's emphasis on regulated undergraduate instruction minimized the impact of Lernfreiheit but Lehrfreiheit quickly took root among a professoriate that was influenced by study on the continent.(2) Advocates of Lehrfreiheit , (henceforth to be called as "academic freedom"), believed that society would benefit by a set of rules designed to protect scholars from interference in their informed pursuit of the truth.

The doctrine of academic freedom did not take root in America without opposition. The doctrine of tenure, the primary procedural guarantee of academic freedom, has been the special target of critics. Opponents of tenure have argued that the doctrine makes institutions of higher education unmanageable and that the doctrine harms the careers of younger teachers.(3) World War I brought attacks on the tenure of professors who opposed America's entry into the war.(4) Earlier opposition to the ideal of academic freedom was

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motivated by a desire to preserve religious conformity.(5) Other attacks on academic freedom centered on the professor's views on sexual morality and race relations.

In response to early attacks on academic freedom, a committee of fifteen professors in 1915 proposed a "Declaration of Principles" which endorsed academic freedom as essential to the proper functioning of professors in their role as discovers and transmitters of knowledge.(6) The committee became the first American Association of University Professors Committee on Academic Freedom and Academic Tenure. In the beginning, it included members of the joint committee on academic freedom and tenure of the American Economic Association, the American Political Science Association and the American Sociological Society. The committee's "Declaration of Principles" was formulated between the first and second annual meetings of AAUP on January 1, 1915, and December 31, 1915, respectively. The Declaration was formulated despite the fact that three of the original members of the committee resigned, (and one resigned member was replaced), and the fact that committee members' attention was partially diverted by the need to respond to appeals for assistance by several professors whose academic freedom purportedly had been denied.(7)

The "1915 Declaration of Principles" constituted both an exposition and defense of the ideal of academic freedom and a set of "practical proposals" for procedures which could protect the professor's academic freedom. The procedures were four: action by faculty committees on reappointments, definition of tenure of office (and adequate notice of dismissal), formulation of grounds for dismissal,

and judicial hearings before dismissal. (8)

Practice proved the "practical," procedural proposals to be incomplete. In 1925 the American Council on Education convened a conference to review the principles of academic freedom and tenure. The conference was attended by representatives of higher education organizations which had formal ties with the Council, including AAUP. Conference participants produced the 1925 "Conference Statement on Academic Freedom and Tenure" which was endorsed by the Association of American Colleges (in 1925) and by the AAUP (in 1926.) Unfortunately, the Conference Statement left some procedural issues unresolved and, in a bid for a more definitive statement of procedural guidelines, a series of negotiations involving the Association of American Colleges and the AAUP began in 1934. The negotiations led to the well known 1940 "Statement of Principles on Academic Freedom and Tenure" and three "Interpretations." Both organizations endorsed the "Statement" and the "Interpretations" in 1941. Since 1941, the "Statement" and the "Interpretations" have been endorsed by numerous other organizations including the American Association for Higher Education, (1950); The National Education Association, (1950); The American Philosophical Association, (1952); The American Catholic Historical Association, (1966); The American Catholic Philosophical Association, (1966); The College Theology Association, (1967); and the American Academy of Religion, (1967). The 1940 "Statement" and "Interpretations" are widely endorsed, quoted and even plagiarized in faculty handbooks of American colleges and universities. Despite the naivete of some courts and the recent efforts of David Figuli and the American Council on Education, the

1940 "Statement" and "Interpretations" continue to be influential, (if not controlling), in American society's understanding of academic freedom in the context of higher education.

The ideal of academic freedom springs from a long-standing philosophical debate over the proper limits of authority. What right does a society have to restrain the freedom of its members? What freedoms ought to be reserved for the individual? What freedoms ought to be reserved for professionals? What freedoms ought to be protected for teachers? Throughout the debate, freedom is defined as "the ability to act in terms of one's interests, desires and tastes, the ability to act in order to realize one's aims, whatever they may be."(10)

Since the drafting of the Bill of Rights, American society has recognized the individual's right to freedom of speech and religion. Some have argued that academic freedom is nothing more than reiteration of the freedom of speech that is guaranteed under the First Amendment to the Constitution. In 1955, Fritz Machlup challenged the argument in an essay "On Some Misconceptions Concerning Academic Freedom."(11) Machlup noted that "academic freedom antedates general freedom of speech by several centuries" and that, unlike freedom of speech, academic freedom is not protected by law "except where contractual relations are involved."(12)

Despite the fact that academic freedom and the freedom of speech are not identical, they seem to share a common philosophical foundation, viz., the argument that the good results which the freedoms produce outweigh the costs of providing the freedoms. Although the theological basis for the right of freedom of speech is, in

part, the formalist view that human beings are endowed by their Creator with certain inalienable rights such as life, liberty and the pursuit of happiness, the philosophical basis for the right of free speech is the consequentialist notion that free speech should be protected by law because it contributes to something that the law should enhance, viz. the common good.(13) Advocates of academic freedom, like advocates of free speech, have argued that "society has much to gain" by protecting the freedom in question.(14) Machlup writes that because "academic freedom promotes intellectual innovation and, indirectly, material as well as intellectual progress, to safeguard it is in the social interest."(15)

Such a consequentialist justification implies that on balance both freedoms are worth protecting. But, of course, such an argument implies that there are limitations. If a type of act in pursuit of free speech (or academic freedom) threatens to produce more harm than good, limitations ought to be imposed.(16)

According to the consequentialist, if the exercise of academic freedom threatens the common good it may properly be limited or suppressed. The advocates of academic freedom seem to have recognized the logic of selective suppressions of academic freedom when they included the following sentence in the 1940 Statement of Principles on Academic Freedom and Tenure. "Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment."(17)

In a book published in English translation by Scribner's in 1906, Friedrich Paulsen, Professor of Philosophy in the University of Berlin, argued that the work of the professor of religion ought

not to be protected by an absolute doctrine of academic freedom. According to Paulsen, because society benefits from propagation of a common faith, the professor of religion in a Protestant university "must be in sympathy with the great religious event of humanity which we call Christianity."(18) If the professor is not able to affirm the tenets of the faith espoused by the charter of his institution, "as an honest man he will have to lay down his office."(19) Why would Paulsen have taken such a position? What harm would be done if, for example, a Roman Catholic were to teach a course in Protestant Theology? Paulsen himself provides the answer.

Writing at the turn of the century, Paulsen believed that the study of religion was more subjective or experiential than any other type of study. Therefore,

> whoever wishes to understand these things must experience them in himself. But he can directly experience them only in this or that particular form. He cannot experience religion in general, but only a particular concrete form of historical religion... In order, therefore, to understand this world, he will necessarily be biased... (20)

According to Paulsen, non-conformity can render the professor incapable of understanding because the non-conformity separates the investigator from the subject matter. In addition, Paulsen argues that institutions have a right to perpetuate themselves and their traditions through the curricular exclusion of criticism of their official dogma. In a single paragraph, Paulsen combines both arguments on behalf of the position that the religious community has the right to deny academic freedom to professors of religion.

> Since the perfect impartiality of a pure intellectual judgment is by the very nature of the case impossible |in the study of religion|, it is a fair demand that whoever engages in |systematic| research, who wishes to instruct others, especially our

> future servants, concerning our nature, should be on our side and conceive and interpret with sympathetic interest. Let our enemies be occupied in the business of bringing our deficiencies to light... Here where we desire to be understood, we need friends who will point out the good and the positive in us, and show the reason that is in us.(21)

There is little question that the German understanding of academic freedom reflected in Paulsen's account contributed mightily to the American notion of the proper limits of academic freedom. In his history of academic freedom, Walter Metzger notes that eight of the thirteen signers of the 1915 "Report on Academic Freedom" of the AAUP had studied in Germany.(22) They were R. A. Seligman, Henry W. Farnam, Richard T. Ely, Arthur Lovejoy, U. G. Weatherly, Charles E. Bennett, Howard Crosby Warren, and Frank Fetter. (Friedrich Paulsen's translator, Frank Thilly, was president of AAUP in 1917. A philosopher, Thilly held a Ph.D. (1895) from Heidelberg.)

The American "1915 Declaration of Principles" reflects the Germanic view of Paulsen when it recognizes both the importance of academic freedom and the need for church-related universities to "impose upon their faculties doctrinal standards of a sectarian character."(23) Prefiguring the "1940 Statement of Principles on Academic Freedom & Tenure," the "1915 Declaration" fails to explain the reasons for tolerating acceptance of the incursion on academic freedom that sectarian demands creates. Nevertheless, given the German influence on the authors of the "1915 Declaration," it would be reasonable to conclude that they were probably persuaded by the arguments advanced by Paulsen that:

1. religion is a subjective study that requires faithful interpreters;
2. in order to perpetuate themselves, religiously-supported

institutions have a fair right to require religious conformity from faculty members.

The second argument may have found special favor in the United States because of the American belief that religious institutions provide the nation's soul.

The purpose of this paper is not to test such historical hypotheses but rather to test the wisdom of the received tradition's tolerance for limitations on the academic freedom of professors of religion in church related institutions.

We may begin by noting that the American Association of University Professors has itself expressed doubts over the need for the clause which allows sectarian requirements to be imposed. (See appendix.) A 1969 joint committee of the AAUP and the Association of American Colleges issued a series of "interpretative comments" which was approved by the Council of the AAUP in April, 1970, and endorsed by the Fifty-sixth Annual AAUP Meeting as "Association policy." The comments appear in the current, (1977), AAUP Policy Documents and Reports , or "Redbook."(24) They include the statement that "most church-related institutions no longer need or desire the departure from the principle of academic freedom implied" in the 1940 statement that "limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment."(25)

Let us assume that the Association is correct in its assertion that few need or desire the religious exemption clause. There remains the question of the validity of Friedrich Paulsen's two arguments that (1) as a subjective topic, religion demands subjec-

tive interpreters, and (2) a religious institution ought to be entitled to perpetuate itself by refusing to employ anyone who would question or criticize the institution. These are the two arguments that seem to underpin the Association's original concession to sectarian limitations on academic freedom.

We shall first examine the argument from subjectivity. In forming the argument, Paulsen seems to have confused subject (or observor) and the subject matter (or religious experience.) Because religion is a personal subject matter, Paulsen concluded that its comprehension was limited to subjects who shared the experience. He contended that in order to interpret Protestantism properly, one must be a Protestant for to be a Protestant is an inherently subjective experience that requires an equally subjective interpretation. Without questioning the fact that being a Protestant is a subjective, (personal), experience, it is fair to ask how the subjectivity of an experience prohibits an analysis of the experience by another subject. Participating in a lynching is undoubtedly a subjective experience. Should a study and interpretation of lynchings be dismissed on the grounds that its author has never participated in a lynching? Obviously not. The growth and development of psychology is evidence that the subjective experience can be grasped by one who has never had the experience and is therefore separated from it. Indeed, philosophers know that even the person who has had a subjective experience is himself temporarily separated from the experience as soon as s/he begins to reflect upon it.

There are not new criticisms. In his classic 1971 study of Graduate Education in Religion, Claude Welch rejected what he called

the "inadequate" and "dangerous" notions about the teaching of religions which constitute the "zoo theory according to which religion can be dealt with only by exhibiting representative members of the various species" and the "insider theory according to which no one except an adherent can legitimately interpret or even understand a religious tradition." (26) Welch refuted the "insider theory" by reducing it to absurdity. It would, he noted, require that the history of the Democratic party be taught by a Democrat. (27) It seems reasonable to consider Paulsen's argument from subjectivity to be refuted.

In his second argument, Friedrich Paulsen contended that a religious institution has a fair right to perpetutate itself by refusing to employ anyone who would question or criticize the institution.

It would be difficult to imagine an argument in support of the converse proposition that institutions should be required to employ their own critics. Nevertheless, one of the primary functions of a university is the quest for truth wherever such a quest might lead. Therefore, self criticism in the quest for truth is defensible. If church-related universities agree to convey contractually academic freedom to faculty and then reserve the right to exempt professors of religion from the guarantee of freedom, what meaning does the conveyance of academic freedom have? Because academic freedom is a contractually-conveyed property right (and not a basic civil right like freedom of speech), society cannot and should not attempt to force its conveyance. On the other hand, when an institution refuses to convey the rights of academic freedom to a portion of its

faculty, its commitment to intellectual inquiry, (and its status as a uninversity), is questionable.

Moreover, the refusal to convey the rights of academic freedom is likely to affect more than the professor of religion. As an integral part of human life, religion ought to be explored by professors in a wide variety of fields including psychology, sociology, anthropology, history, literature, philosophy and education. In an these fields, teaching draws upon research which prospers only when researchers are able to ask and address questions which previous research has been able to raise. When attempts to answer certain questions are blocked by the authorities, (e.g., through hiring practices designed to screen out interested researchers), intellectual understanding is distorted. When teachers in several disciplines are prohibited from sharing the results of investigation into certain "dangerous" questions, learning suffers. To put the matter another way, explanations of human behavior that do not honestly take religion into account are destined to fail either the test of completeness or the test of truthfulness. When a church-related institution sacrifices intellectual freedom to dogma and tradition, the quality of its academic enterprises suffers across the curriculum.

If an institution denies academic freedom to all of its employees, the narrow character of the institution is clear to students, faculty, and the public. There is no reason to impose academic freedom on institutions whose faculty and students wish to resist it. However, when a university or college extends the rights of academic freedom to some but not all of its faculty, it effectively

prohibits an impartial quest for truth while openly proclaiming support for such a quest. To deny academic freedom to those who would explore certain "dangerous" questions is inconsistent with the declaration of support for the intellectual enterprise and tantamount to a fraud. Society would be well served were the American Association of University Professors and the American Academy of Religion to condemn categorically and unequivocally the practice of conveying rights of academic freedom to researchers in some, but not all, disciplines.

In conclusion, academic freedom has been denied to professors of religion on two grounds: (1) religion is so much a personal experience that only a believer can understand and teach it well, and (2) institutions have a right to perpetuate themselves through the friendly presentation of their official doctrine. We have seen that the argument from subjectivity fails because of confusion between the subject matter (which is personal) and the understanding subjects who can formulate objective or valid, conclusions about beliefs that are foreign to their own, immediate experience. The argument from the right of self-perpetuation stands unless and until the institution attempts to control teaching and research in a selective manner. Free inquiry does not admit of degrees; partial abridgement constitutes total abridgement. When institutions which deny academic freedom to professors of religion nevertheless claim to be committed to free inquiry, they perpetuate a moral fraud on the public the gravity of which outweighs the right of the "universities" to perpetuate themselves.

Given the inadequacies of the 1940 AAUP Statement on Academic

Freedom clause which permits institutions to use their religious aims to limit academic freedom, and given the AAR's 1967 endorsement of the Statement, the members of the AAR should recommend that the AAUP unconditionally repudiate the clause.

SHOULD THE RELIGION PROFESSOR ENJOY ACADEMIC FREEDOM?

ENDNOTES

1. Ralph F. Fuchs, "Academic Freedom - Its Basic Philosophy, Function and History," in Academic Freedom and Tenure, ed. by Louis Joughin (Madison: University of Wisconsin Press, 1969), p. 248. See also Friedrich Paulsen, The German Universities and University Study, trans. Frank Thilly and William W. Elwang, (New York: Charles Scribner's and Sons, 1906), pp. 228 ff; Richard Hofstadter and Walter P. Metzger, The Development of Academic Freedom in the United States, (New York: Columbia University Press, 1955); Hans W. Baade, Academic Freedom: The Scholar's Place in Modern Society, (1964); Howard Mumford Jones," The American Concept of Academic Freedom in Academic Freedom and Tenure, ed. by Louis Joughin, (1969), pp. 224-263.

2. Fuchs, op. cit., p. 248.

3. Fritzh Machlup, "In Defense of Academic Tenure, " pp. 306-338 in Academic Freedom and Tenure, ed. by Louis Joughin, (1969), pp. 306-308.

4. Fuchs, op. cit., p. 251.

5. Richard Hofstadter and Walter P. Metzger, The Development of Academic Freedom in the United States, (1955), pp. 155-177, 286-303, 320-345.

6. "The 1915 Declaration of Principles" in Joughin, op. cit., pp. 155-176. See esp. pp. 164-165.

7. Editorial note to "The 1915 Declaration of Principles," in Joughin, op. cit., pp. 155-156.

8. Ibid., pp. 174-175.

9. Worzella V. Board of Regents, Sup. Ct. of South Dakota, 77 S.D. 447, 93 N.W. 2d. 411 (1958) quoted in Machlup, op. cit., p. 306.

10. Martin P. Goldberg, Philosophy of Law (Englewood Cliffs: Prentice Hall, 1975), p. 53.

11. in Joughin, op. cit., pp. 177-209. See especially pp. 179-180.

12. Ibid., p. 179.

13. Basic Writings of St. Thomas Aquinas, ed. by Anton C. Pegis, (New York: Random House, 1954), Vol. II, p. 784.

14. Machlup, op. cit., p. 181. Compare Goldberg, op. cit., chapter three, especially p. 68.

15. Machlup, loc. cit. Similarly Goldberg concludes a discussion of free speech by writing "I have no doubt that a free society is one that takes the risk of allowing the indivdiual to do what might be bad, harmful or foolish," loc. cit.

16. Compare Goldberg, p. 68 and Machlup, p. 198. According to Goldberg, "a morality of laissez faire produces a society without protected rights," while Machlup observes that one's right to academic freedom ends when literal subversion begins.

17. AAUP Policy Documents & Reports, (the "Redbook"), Washington: AAUP, 1977, p. 2.

18. Friedrich Paulsen, The German Universities and University Study (New York: Scribner's, p. 1906), p. 235.

19. Ibid., p. 235.

20. Ibid., p. 232.

21. Ibid., pp. 232-33.

22. Hofstadter and Metzger, p. 396.

23. in Joughin, p. 175. The "Declaration" is on pp. 155-176. In the interest of fairness, both the "Declaration" and the "1940 Statement of Principles on Academic Freedom & Tenure" require institutions which intend to impose sectarian limitations on the academic freedom of professors announce those limits at the time that each professor is hired.

24. AAUP Policy Statements and Documents, (Washington, 1977).

25. Ibid., pp. 2-3.

26. Claude Welch Graduate Education in Religion: A Critical Appraisal (Missoula: University of Montana Press, 1971), p. 16.

27. Welch seems to believe that universities do not have the legal right to withhold academic freedom with given notice. Because academic freedom is a property right, its conveyence can be denied, however.